IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 53 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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G S R T C

Versus

KUNAJAL SINGH RAMESHWAR SINGH HADA

Appearance:

MR HS MUNSHAW for Petitioner 1

MR DJ BHATT for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Article 226 and 227 of the Constitution. The petition is filed by the petitioner-Corporation challenging the judgement and award passed by the Industrial Tribunal, Ahmedabad,

in Reference (IT) No.11/95 dated 8th October 1996.

2. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of (i) Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38, (ii) Khalil Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184) and (iii) Ashok Kumar Vs. Sita Ram (2001(4) SCC 478) on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

3. Even otherwise, on the facts of the case, on examining the nature of the controversy as it stands today, the entire question has become academic in view of lack of timely action by the petitioner.

4. The controversy arises on account of an application made by the respondent-emplyee for correction of his date of birth as found in the official records. This application was made before the respondent-employee received the usual notice issued by the employer-petitioner that the employee would be reaching his date of superannuation on a given date.

5. According to the petitioner-Corporation, the date of birth of the respondent-employee as found from the official records, including the entries in the service book based upon the application made by the respondent employee, was 14th January 1937. According to the petitioner, therefore, the employee would have reached the age of superannuation at 58 years on 31st January 1995. As per the rules and practice of the petitioner Corporation, a notice was issued to the employee on 1st August 1994 intimating him that he would be superannuated with effect from 31st January 1995 (based on his date of birth as found on the records being 14th January 1937). However, this notice of superannuation did not take into account the pending application made by the employee for correction of his birth date from 14th January 1937 to 1st January 1939. It was for this reason that the

employee approached the Industrial Tribunal at Ahmedabad by way of reference (IT) no.11/95 with a prayer that the official records of the employer be directed to be corrected to show the correct date of birth, wherein a prayer for interim relief was also made that he should not be superannuated with effect from 31st January 1995.

6. It is pertinent to note that in the said reference, the Tribunal by its order dated 8th October 1996 granted the prayer for interim relief and directed status quo (by order below Exh.4). It was on account of this interim relief that the respondent-employee continued to work as such, and ultimately reached the age of superannuation (58 years) according to his claimed date of birth, on 1st January 1997. It was after this date that this Court for the first time applied its mind to the petition, and by order dated 7th January 1997 issued notice to the respondent. Even on that date this Court was conscious of the fact that the date of superannuation as per the date of birth claimed by the employee had expired and for that reason no interim relief was granted in the petition, as noted in the aforesaid order.

7. It is also pertinent to note that the order of interim relief passed by the Tribunal in favour of the employee dated 8th October 1996, which permitted the respondent-employee to continue in service upto the date of superannuation on the basis of his claimed date of birth, was not challenged. It was only for this reason that the respondent-employee was continued in service until 1.1.1997 when he reached the age of superannuation according to the claimed date of birth.

8. In the present facts situation, the entire exercise of deciding the controversy on merits is merely academic and also futile.

9. No doubt, the Supreme Court has observed in a number of decisions that the Courts ought not to entertain applications from employees for change in the date of birth when they are close to the date of retirement. However, this principle laid down by the Supreme Court was not pointed out to the Tribunal either when the Tribunal was dealing with the application for interim relief nor was it pointed out to the Tribunal when the Reference was being decided finally.

10. At this stage even if this principle is sought to be applied, the fact remains that the respondent-employee continued to render services to the petitioner

Corporation under the protection of the orders of the Tribunal. Since he has rendered actual service and received wages for such period of service, even if the present petition were to be allowed on principle, the petitioner would not be able to claim or effect any recovery from the respondent-employee.

11. In view of the above, I find that there is no justification for going into a detailed discussion on the question of fact as to the correct date of birth of the respondent-employee.

12. In the premises aforesaid, the present petition cannot be allowed and is accordingly dismissed. Rule is discharged with no order as to costs.

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